UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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ELISHABA PALMER, as Mother and Natural Guardian of Infant Plaintiff S.P.,

Plaintiff,

-against-

Detective GABRIEL ECHEVARRIA, Shield No. 6488; Sergeant JOHN PARENTE; Detective VIRGIL CUMBERBATCH; Detective ANGELO CUOZZO; Detective PETER HOEFLINGER; Detective JENNYANN NELSON; Detective RASHAN LACOSTE; Detective NASSON INNOCENT; and JOHN and JANE DOE 8 through 10, individually and in their official capacities (the names John and Jane Doe being fictitious, as the true names are presently unknown),

Defendants.

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FIRST AMENDED COMPLAINT

13 CV 7403 (WFK) (CLP)

Jury Trial Demanded

NATURE OF THE ACTION

1. This is an action to recover money damages arising out of the violation of plaintiff's rights under the Constitution.

JURISDICTION AND VENUE

2. This action is brought pursuant to 42 U.S.C. §§ 1983 and 1988, and the Fourth, Fifth, Sixth and Fourteenth Amendments to the Constitution of the United States.

3. The jurisdiction of this Court is predicated upon 28 U.S.C. §§ 1331 and 1343.

4. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391 (b) and (c).

JURY DEMAND

5. Plaintiff demands a trial by jury in this action.

PARTIES

6. Plaintiff Elishaba Palmer, as mother and natural guardian of infant plaintiff S.P. ("plaintiff" or "S.P.") is a resident of Kings County in the City and State of New York.

7. Defendant Detective Gabriel Echevarria, Shield No. 6488 ("Echevarria"), at all times relevant herein, was an officer, employee and agent of the NYPD. Defendant Echevarria is sued in his individual and official capacities.

8. Defendant Sergeant John Parente ("Parente"), at all times relevant herein, was an officer, employee and agent of the NYPD. Defendant Parente is sued in his individual and official capacities.

9. Defendant Detective Virgil Cumberbatch ("Cumberbatch"), at all times relevant herein, was an officer, employee and agent of the NYPD. Defendant Cumberbatch is sued in his individual and official capacities.

10. Defendant Detective Angelo Cuozzo ("Cuozzo"), at all times relevant herein, was an officer, employee and agent of the NYPD. Defendant Cuozzo is sued in his individual and official capacities.

11. Defendant Detective Peter Hoeflinger ("Hoeflinger"), at all times relevant herein, was an officer, employee and agent of the NYPD. Defendant Hoeflinger is sued in his individual and official capacities.

12. Defendant Detective Jennyann Nelson ("Nelson"), at all times relevant herein, was an officer, employee and agent of the NYPD. Defendant Nelson is sued in her individual and official capacities.

13. Defendant Detective Rashan Lacoste ("Lacoste"), at all times relevant herein, was an officer, employee and agent of the NYPD. Defendant Lacoste is sued in his individual and official capacities.

14. Defendant Detective Nasson Innocent ("Innocent"), at all times relevant herein, was an officer, employee and agent of the NYPD. Defendant Innocent is sued in his individual and official capacities.

15. At all times relevant defendants John and Jane Doe 8 through 10 were police officers, detectives or supervisors employed by the NYPD. Plaintiff does not know the real names and shield numbers of defendants John and Jane Doe 8 through 10.

16. At all times relevant herein, defendants John and Jane Doe 8 through 10 were acting as agents, servants and employees of the City of New York and the NYPD. Defendants John and Jane Doe 8 through 10 are sued in their individual and official capacities.

17. At all times relevant herein, all individual defendants were acting under color of state law.

STATEMENT OF FACTS

18. At approximately 5:30 a.m. on November 15, 2013, plaintiff was lawfully present inside her grandmother's home at 1548 East New York Avenue in Brooklyn, New York.

19. The defendant officers entered the home dressed in riot gear under the guise of an alleged search warrant and handcuffed the three occupants, including S.P.

20. The defendants conducted an exhaustive search of the apartment, recovering no contraband.

21. S.P., who was a 17 year-old high school student at the time, was falsely arrested, put in a police van and taken to the 73rd Precinct.

22. At the precinct the officers falsely informed employees of the Kings County District Attorney's Office that they had observed plaintiff possess marijuana and falsified paperwork, including an arrest report, regarding the circumstances of plaintiff's arrest.

23. At no point did the officers observe plaintiff possess marijuana.

24. After spending the night at the precinct, plaintiff was taken to Brooklyn Central Booking the following afternoon.

25. After being held for approximately 30 hours in custody, S.P. was arraigned, her criminal charges were adjourned in contemplation of dismissal and she was released.

26. Plaintiff suffered damage as a result of defendants' actions. Plaintiff was deprived of his liberty, suffered emotional distress, mental anguish, fear, pain, bodily injury, anxiety, embarrassment, humiliation, and damage to his reputation.

FIRST CLAIM
False Arrest

27. Plaintiff repeats and realleges each and every allegation as if fully set forth herein.

28. Defendants violated the Fourth and Fourteenth Amendments because they arrested plaintiff without probable cause.

29. As a direct and proximate result of this unlawful conduct, plaintiff sustained the damages hereinbefore alleged.

SECOND CLAIM
Denial Of Constitutional Right To Fair Trial

30. Plaintiff repeats and realleges each and every allegation as if fully set forth herein.

31. The individual defendants created false evidence against plaintiff.

32. The individual defendants forwarded false evidence to prosecutors in the Kings County District Attorney's office.

33. In creating false evidence against plaintiff, and in forwarding false information to prosecutors, the individual defendants violated plaintiff's right to a fair trial under the Due Process Clause of the Fifth, Sixth and Fourteenth Amendments of the United States Constitution.

34. As a direct and proximate result of this unlawful conduct, plaintiff sustained the damages hereinbefore alleged.

THIRD CLAIM
Failure To Intervene

35. Plaintiff repeats and realleges each and every allegation as if fully set forth herein.

36. Those defendants that were present but did not actively participate in the aforementioned unlawful conduct observed such conduct, had an opportunity prevent

such conduct, had a duty to intervene and prevent such conduct and failed to intervene.

37. Accordingly, the defendants who failed to intervene violated the Fourth, Fifth, Sixth and Fourteenth Amendments.

38. As a direct and proximate result of this unlawful conduct, plaintiff sustained the damages hereinbefore alleged.

PRAYER FOR RELIEF

WHEREFORE, plaintiff respectfully requests judgment against defendants as follows:

(a) Compensatory damages against all defendants, jointly and severally;

(b) Punitive damages against the individual defendants, jointly and severally;

(c) Reasonable attorneys' fees and costs pursuant to 28 U.S.C. § 1988; and

(d) Such other and further relief as this Court deems just and proper.

DATED: March 13, 2014
New York, New York

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